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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1172

JAMES J. LAUGHLIN,

Petitioner,

vs.

**CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA,**

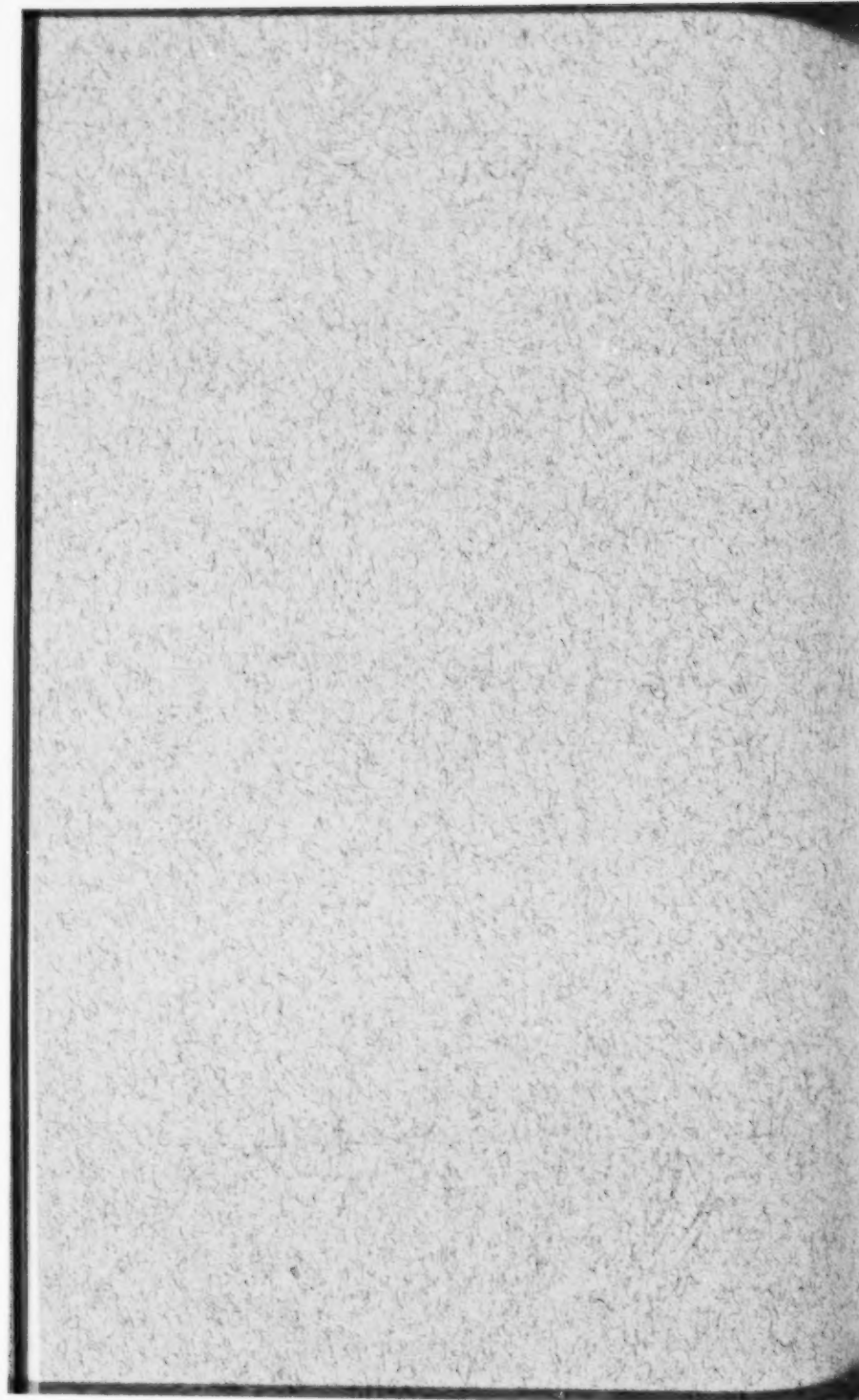
Respondents

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA WITH BRIEF IN SUP-
PORT THEREOF.**

JAMES J. LAUGHLIN,

Petitioner,

In Proper Person.



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**PETITION FOR WRIT OF CERTIORARI TO THE
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PORT THEREOF.**

The petitioner prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered November 13, 1944, denying petition for writ of mandamus.

Opinion Below

The opinion of the United States Court of Appeals for the District of Columbia has not yet been reported (R. 24).

Jurisdiction

The judgment of the court of appeals was entered on November 13, 1944 (R. 24). The jurisdiction of this Court

is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. Petition for rehearing was denied December 5, 1944. By order of the Chief Justice of the United States the time for filing petition for writ of certiorari in this Court has been extended to April 17, 1945.

Questions Presented

1. Whether an attorney can be expelled from a criminal trial for filing a petition for the impeachment of a judge.
2. Whether a trial judge can summarily expel an attorney from a criminal trial without affording the attorney the constitutional safeguard of due process of law.
3. Whether the action of a trial judge in expelling an attorney from a criminal trial for filing a petition for impeachment of the judge does not offend the constitutional safeguard of the right of free speech.

Statement

Petitioner is a member of the bar of this Court, the United States Court of Appeals for the District of Columbia, the District Court of the United States for the District of Columbia, the Federal Court for the District of Maryland, the United States Circuit Court of Appeals for the Fourth and Fifth Judicial Circuits and the courts of Indiana (R. 2).

In the court below, James J. Laughlin is named petitioner and Edward C. Eicher is named respondent. On April 6, 1945, the Court of Appeals entered an order substituting the Chief Justice and Associate Justices of the District Court of the United States for the District of Columbia as parties respondent in the place and stead of Edward C. Eicher (R. 40).

Petitioner was engaged to represent two defendants in the case entitled: "*United States of America v. Joseph E. McWilliams, et al.*", Criminal No. 73086. This was the case

commonly referred to as the sedition case. The trial began April 17, 1944, and the Government was still presenting its evidence when the presiding Judge, the late Honorable Edward C. Eicher, died November 30, 1944. A mistrial was declared December 7, 1944. Petitioner had made a thorough study of the indictment in the case and conferred from time to time with various counsel and defendants in the case since the filing of the indictment on January 3, 1944. Petitioner appeared on behalf of defendant Robert Noble and defendant Edward James Smythe and participated in all proceedings up to and including July 5, 1944.

Petitioner says that the case was presided over by the Honorable Edward C. Eicher, then Chief Justice of the District Court of the United States for the District of Columbia. Petitioner says that the conduct of Judge Eicher in the so-called sedition case was of such a nature that he was bringing the courts of the District of Columbia into disfavor and disrepute and was subjecting the good name of the Judiciary in the District of Columbia as well as the good name of the Federal Judiciary as a whole to contempt and ridicule, in that Judge Eicher was so biased and prejudiced against the defendants in the so-called sedition case and was so biased and prejudiced in favor of the prosecution that petitioner considered it his duty in order to protect the good name of the courts of the District of Columbia to file a petition for the impeachment of Judge Eicher with the Speaker of the United States House of Representatives and said petition for impeachment was filed with the Speaker of the United States House of Representatives on July 1, 1944 (R. 10).

Petitioner says that the sedition trial recessed from June 29th to July 5th. On July 5th, Judge Eicher expelled petitioner from further participation in the sedition trial (R. 26). Petitioner took exception to Judge Eicher's order, left the courtroom, returned next day, was expelled, and immediately filed in the United States Court of Appeals

for the District of Columbia a petition for leave to file a petition for writ of mandamus to require Judge Eicher to reinstate him as one of counsel in the trial. By an equal division of the then sitting members, this court denied the writ and later denied a petition for rehearing by an equally divided court (R. 28). Petitioner then moved for leave to file a second petition for writ of mandamus. The court below granted leave to file the petition but denied the petition for the writ with two judges dissenting (R. 35).

Specification of Errors to Be Urged

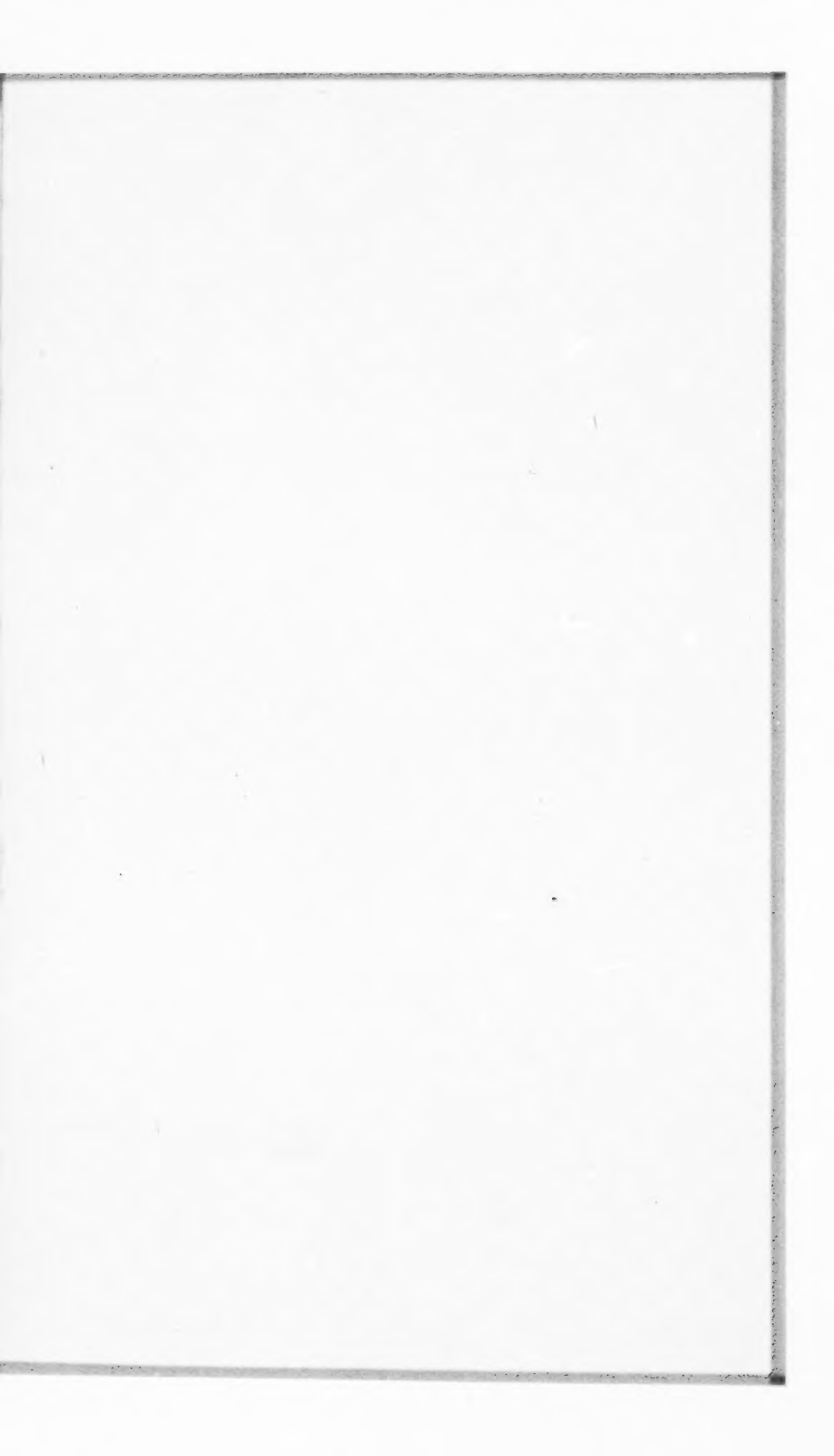
The Court of Appeals erred:

1. In holding that Judge Eicher was justified in expelling petitioner from the sedition trial.
2. In refusing to grant the writ of mandamus and in upholding the action of Judge Eicher.

Reasons for Granting the Writ

1. We believe that the constitutional questions involved here are important and serious and that no court has a right to penalize a citizen for filing a petition for the impeachment of a public officer.
2. A trial judge cannot summarily expel an attorney from a case without complying with the law relating to suspension or expulsion of members of the bar.
3. The writ of certiorari should be granted due to the fact that the action of Judge Eicher in expelling petitioner violated the right of free speech.

JAMES J. LAUGHLIN,
National Press Building
Washington, D. C.
Petitioner, in Proper Person.





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CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA,

Respondents.

BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinion of the United States Court of Appeals for the District of Columbia is reported in 145 Fed. (2nd) 700.

Jurisdiction

The judgment of the Court of Appeals was entered on November 13, 1944 (R. 35). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. Petition for rehearing was denied December 5, 1944. By order of the Chief Justice of the United States the time for filing peti-

tion for writ of certiorari in this Court has been extended to April 17, 1945 (R. 41).

Questions Presented

1. Whether an attorney can be expelled from a criminal trial for filing a petition for the impeachment of a judge.
2. Whether a trial judge can summarily expel an attorney from a criminal trial without affording the attorney the constitutional safeguard of due process of law.
3. Whether the action of a trial judge in expelling an attorney from a criminal trial for filing a petition for impeachment of the judge does not offend the constitutional safeguard of the right of free speech.

Statement of the Case

The statement of the case already appears in the petition and is not again repeated.

Specification of Errors to Be Urged

The Court of Appeals erred:

1. In holding that Judge Eicher was justified in expelling petitioner from the sedition trial.
2. In refusing to grant the writ of mandamus and in upholding the action of Judge Eicher.

Argument

In order that the case may be thoroughly understood it is well to refer to the following from the majority opinion:

“Until July 5, 1944, petitioner represented two of the defendants in that trial. On that day, respondent called upon the attorneys who were concerned in the matter of ‘explain or justify or make such showing as they see fit with regard to’ the formation by them of a certain ‘club, as they see fit to call it,’ which seemed ‘prima facie at least’ to show contempt of the court.”

This had relation to the formation of the so-called "Eicher Contempt Club" formed by an attorney from Chicago, Albert W. Dilling, and was based on the fact that Judge Eicher had fined a great number of attorney for contempt of court. Therefore, it will be seen that the subject matter of the discussion for July 5, 1944, had nothing to do with the matter of the impeachment but was confined solely to the proposition as to whether the formation of the "Eicher Contempt Club" amounted to contempt of court. Judge Eicher stated that due to the Nye and Bridges cases in this Court the formation of the contempt club did not constitute contempt of court. Although the only thing being discussed was the matter of the "Eicher Contempt Club" Judge Eicher permitted another attorney, one Ira Chase Koehne, to state that he had filed with the Speaker of the United States House of Representatives opposition to the petition for impeachment filed by petitioner (R. 24). Petitioner when called upon for a statement as to the "Eicher Contempt Club" strenuously objected to the action of Attorney Koehne in going into the impeachment matter and then when petitioner attempted to answer Mr. Koehne and to support his charge of impeachment, was stopped by Judge Eicher. The petitioner said this:

"That would suffice if your Honor did not permit another attorney, Mr. Koehne, to make certain statements which I cannot, as a matter of personal honor, permit to go unchallenged. I want to say this: It is true that there was an impeachment filed with the Speaker of the House of Representatives. I submit any citizen of the United States, if he is aggrieved has the right to petition for an impeachment of a public officer. * * * So, availing myself when this thing went on day after day and week after week * * *, I felt it was high time that we could appeal to the only tribunal that could take care of such a situation as this, and there was an impeachment filed with the Speaker of

the House of Representatives. * * * Since you have permitted Mr. Koehne to read a certain portion of the petition for impeachment, I think I ought to have a right to refer to the impeachment itself. It is headed: 'Petition for Impeachment of Edward C. Eicher, Chief Justice of the District Court of the United States for the District of Columbia.' "

At this point respondent said:

"By the way, Mr. Laughlin, that has nothing to do with the subject matter that the court suggested for discussion this afternoon. The Court had no information as to what Mr. Koehne's remarks were going to be. He was given the privilege to speak in his own defense in regard to the matter that the Court suggested."

It is apparent, therefore, that the only matter to be considered by the court was the "Eicher Contempt Club," and it is apparent from the record that Judge Eicher would not permit petitioner to reply to the remarks made by Attorney Koehne.

A short recess was taken and then when Judge Eicher returned to the bench the following colloquy then occurred:

"The Court. Now, that brings the court to another matter the Court feels should be explored and determined before the jury returns tomorrow morning, and that is the matter arising in connection with the petition for impeachment of this Court filed by one of counsel, in the case, Mr. Laughlin, with the Speaker of the House of Representatives.

"At this point, the Court offers for the record, a copy of said petition for impeachment, and the Court now calls upon Mr. Laughlin in open court to show cause why he should not be dismissed from further participation in this case as counsel for either of the two defendants heretofore represented by him in the case, and denied further participation in this trial as counsel for the defendant(s).

"Mr. Laughlin, you may be heard.

"Mr. Laughlin. I submit your Honor has no power to call upon me. Any citizen of the United States has a right to petition Congress for the impeachment of any officer of the United States. I exercised the constitutional right given me, and filed with the Speaker of the House, and I am prepared, when the appropriate committee of Congress calls upon me—I have asked that committee—or I have suggested to the Speaker in the petition that it make request of the Department of Justice for the transcript of proceedings in this case so that they can deal more intelligently with the subject matter of the petition. So, I say your Honor is without power at this stage to take any notice. You would be usurping the function of another branch of the Government. That is beyond your power.

"The Court. Is that all you have to say?

"Mr. Laughlin. That is all I have to say.

"The Court. Very well.

"It is the order of this court, Mr. Laughlin, that you are dismissed from this court as an attorney of record for either Mr. Smythe or Mr. Noble, or for any other of the defendants for whom you have heretofore appeared as associate counsel; that you be denied further participation in this case or in the trial of it; that you are ordered to turn over to and to surrender to your successor counsel all papers, documents or matters of evidence in any way affecting the defense of the defendants that you have heretofore represented."

It will be seen, therefore, that petitioner was expelled solely because he filed a petition for the impeachment of Judge Eicher. It is plain that he was expelled for no other reason. The majority opinion says this:

"The petition to the House of Representatives for respondent's impeachment, which petitioner publicly filed while the trial was pending, is in the record. It contains highly derogatory assertions, some of them fantastic, regarding respondent's alleged relation to the

trial and his alleged conduct of the trial, and is in effect a public profession of contempt for respondent's character. An attorney who publishes such a document during the trial to which it relates should ask to be excused from the trial. His further participation would be useful neither to his client nor to the court and would seriously embarrass counsel, court, and defendants. It is immaterial in this connection whether petitioner's publication is protected by the rights of petition and of free speech or is a criminal attempt to obstruct justice, for his continued participation in the trial would be equally harmful in either case" (R. 25).

In considering this let us analyze for a moment whether the petition for impeachment contains "highly derogatory assertions, some of them fantastic." The members participating in the majority opinion could not single out any of the allegations in the petition and label them fantastic. We admit in examining the petition for impeachment that it might be difficult to believe that the matters contained therein are true but petitioner says beyond a shadow of a doubt that every allegation could be supported. There is an allegation, for instance, that Judge Eicher had used his judicial office for political purposes in that:

"the said Edward C. Eicher, due to his intense dislike for the Honorable Gerald P. Nye, a United States Senator from the state of North Dakota, announced publicly that he would conduct a hearing as to the wisdom of subpoenaing the said Senator Gerald P. Nye, and did so conduct a hearing, with all members of the press present. This was on Thursday, June 22nd. At that time, the said Senator Nye was engaged in a bitter struggle for renomination in North Dakota and therefore the said Edward C. Eicher well knew that the press of North Dakota and the radio would broadcast the fact that in some way or other the said Senator Nye was connected with the sedition case,

"It is well known that the said Edward C. Eicher has made many statements bitterly condemning Senator Nye and in fact condemning anyone who opposes the foreign policy of the Roosevelt Administration."

This charge was not fantastic and could have been supported by ample evidence. The petition for impeachment recited that:

"The said Edward C. Eicher has been guilty of misconduct in office by his arbitrary, tyrannical and abusive attitude in the so-called sedition case. The said Judge Eicher has a definite and fixed opinion, in the view of petitioner, that all defendants in the sedition case are guilty, and it is the view of Petitioner, well supported by the record, that Judge Eicher desires that every defendant be convicted. On this account, the said Judge Eicher has been disregarding the rules of evidence and is permitting the prosecution to introduce into the trial testimony that in no wise relates to the charge in the indictment, that is, that the defendants conspired to undermine the morale of the armed forces" (R. 11).

The petition for impeachment recited:

"That the said Edward C. Eicher is completely under the domination of the prosecutors, O. John Rogge and Joseph W. Burns, and he permits the said Rogge and Burns to conduct themselves in a manner contrary to the accepted practice and without rebuking either of them".

And the impeachment petition also recited this:

"The said Judge Eicher has, since the beginning of the sedition case, sustained practically two objections made by defense attorneys while overruling perhaps five thousand. During the same period of time he has sustained perhaps twenty-five hundred objections made by the prosecution while overruling perhaps two and not more than three."

While it is true that the reading of this may seem to be fantastic, yet the record of the case will positively bear out these allegations.

The petition for impeachment recites this:

"The said Edward C. Eicher has also been abusive, arbitrary and tyrannical toward members of the defense staff and is constantly banging his gavel in a manner strikingly similar to a heated contest in one of the precinct committees in a bitter political campaign. His purpose, in the view of Petitioner, is to intimidate, browbeat and threaten defense counsel to the extent that they will be fearful to protect the rights of their defendants. The said Edward C. Eicher has also made threats, intimidations and levied fines on various attorneys, and so restricted cross-examination of government witnesses that the members of defense staff have been deprived of their constitutional right to properly defend their clients" (R. 11).

The petition also recited:

"Charges of bias and prejudice totalling some five or six in number have been filed against the said Judge Edward C. Eicher but he has overruled said affidavits supporting the charges of bias and prejudice" (R. 11).

All of these allegations could be amply supported by the record in the case and by competent evidence.

The majority opinion said this:

"Petitioner did not stop with publicly filing the petition for impeachment. He voluntarily stated in open court that he had filed it. By clear implication he asserted in open court that its charges were true. In open court he accused the respondent of gross and habitual misconduct in the trial. He invited respondent to consider the crime and punishment of Judge Manton. All this had not even the excuse of relevance to any motion or matter before the court. All this was contempt in the court's presence" (R. 11).

In this respect, either the members participating in the majority opinion were not conversant with the full situation or they misconstrued the facts. The petitioner objected to the impeachment being considered at all. As a matter of fact, the record of the sedition trial shows this, with the petitioner speaking:

"I submit any citizen of the United States, if he is aggrieved, has the right to petition for an impeachment of a public officer. In fact, the Constitution gives him that right, and, as I say, if he has that grievance and he does not exercise the right that the Constitution gives him, then he is not a good citizen. So, availing myself when this thing went on day after day and week after week, and I saw our whole system of justice in the District of Columbia going into chaos and into disrespect, I felt it was high time that we could appeal to the only tribunal that could take care of such a situation as this, and there was an impeachment filed with the Speaker of the House of Representatives.

"Before referring to that further, because I say this is not a forum, this is not the time, this is not the place to try the impeachment. There will be an appropriate committee of Congress, and if the Committee recommends and votes for your impeachment your Honor will have your day in court when tried by the United States Senate. That is the orderly and constitutional way of doing things."

With regard to the expression made as to Judge Manton in the majority opinion, I submit while having no bearing on the issues, has not given a fair and accurate account of that. The records of July 5th show this with the petitioner speaking:

"Before this trial began, I was never as much as even rebuked as far as I can recall, not even as much as rebuked in the conduct of a case, and my cases have gone into the hundreds. I suppose it is in excess of 2,000, and most of them have been criminal cases.

"Therefore, it would seem strange that in just one trial so many attorneys would go so far astray as to incur the displeasure of your Honor.

"Of course, clearly, we are officers of the court. We have certain personal pride. We have the duty to our defendants. Therefore, if we feel that your Honor is favoring the Government, that is, time after time, you grant every whim and every wish of theirs and at the same time deny the same request that we make, then, of course, we would be less than men if we did not in an orderly and legal way bring that to your Honor's attention.

"Of course, there is the duty on all of us to maintain respect for the courts. We learned that in law school, and I am sure there isn't an attorney here who would not go to great length to try to inculcate that in the citizenry of the United States because, if our courts fail, what have we left? We know in the last ten years many things have happened that has shaken the confidence of the people of the United States to the very foundation. Take, in the case of Judge Manton, who was sent to the United States Penitentiary, which was the worst thing to happen in this country since the British burned the Capitol. No, I say there is a duty on the part of all of us to maintain but, by the same token, the courts must merit that respect and must merit that confidence. I say that certainly all the vice cannot be on one side and all the virtue on the other side."

The majority opinion says this:

"Respondent might, of course, have punished petitioner for this contempt. But petitioner had already been punished twice, once by respondent and once by another judge, for contemptuous conduct in this trial. Respondent turned from punishment to prevention. He might have instituted proceedings for petitioner's disbarment or suspension from practice. He chose a more lenient and more promptly effective course. He exercised only the elementary right of a court to protect

its pending proceedings, which includes the right to dismiss from them an attorney who cannot or will not take part in them with a reasonable degree of propriety."

It should be stated here that the judges participating in the majority opinion committed a grievous error in referring to the other contempts. As a matter of fact, one contempt consisted of Judge Eicher fining petitioner \$200 for taking exception to the persistent and wilful banging of the gavel. That was dropped and never pursued. The other contempt was at the time of the filing of this opinion in the court of appeals and is at the present time still on appeal in the United States Court of Appeals. Therefore the majority judges were in error in referring to the merits of that contempt, and, in fact, when that matter was brought to their attention, all the judges participating in the majority opinion promptly disqualified themselves from sitting in the contempt appeal in the court of appeals.

It is submitted that the majority opinion was not supported by law—in fact, it rested on one case—*Brown v. Miller*, 52 App. D. C. 330; 286 F. 994. That case merely sets forth the proposition that an attorney employed in the Office of the Alien Property Custodian had the right of access to all documents and files in the office and could be called on by the Custodian to act in his capacity of attorney, and it was held that he sustained the relation of attorney to the Custodian concerning the matters of a corporation seized by the Custodian, with reference to which the attorney had written, received, and examined letters and papers touching the closing up of its affairs. In other words, the matter boiled down simply comes to this: That the court merely held that it could prevent an attorney from appearing for a party where previously the attorney had represented the adverse party with respect to matters in-

volved in the action. That has absolutely no application to the facts of this case. In *Brown v. Miller* it should also be pointed out that the attorney was prevented at the outset from appearing. It was also a civil case, not a criminal case. The fact that it had no application is clearly set forth in the dissenting opinion of Judge Stephens. We think the dissenting opinion of Judge Stephens, who was joined by Chief Justice Groner, clearly stated the law. Judge Stephens' opinion says this:—

“There were proceedings in the District Court on July 5th preceding those set out above. These are referred to in the opinion of the majority and taken into account by the majority in reaching their conclusion. But I think it clear from the entire transcript of the proceedings of July 5th that nothing occurring in that part of the proceedings which preceded what has been set out above was considered by the respondent as a basis for the order of expulsion, but that that order was founded solely upon the filing of the impeachment application by the petitioner. In the light of the whole of the transcript, any other conclusion seems to me to be impossible.”

1. *Whether an attorney can be expelled from a criminal trial for filing a petition for the impeachment of a judge:*

We submit that this question has been satisfactorily answered. In fact, there is no case holding that an attorney could be expelled from a criminal case for filing a petition for the impeachment of a public official. As a matter of fact, it is difficult to comprehend such a case. The Constitution affords any citizen the right to request the impeachment of a public official. Petitioner, of course, recognizes and concedes that it is a serious matter, indeed, to petition for impeachment of the very judge presiding in a case. But in the instant matter the petition for impeachment was filed only after the most mature consideration and only

after petitioner believes that there was no other avenue of approach open to him to combat the misconduct on the part of the trial judge. Petitioner realizes and concedes that if a petition is filed to embarrass the trial judge and contains matters that are false, scandalous and derogatory, that immediate steps should be taken to bring the attorney to account in the manner prescribed by law. There is no quarrel and can be none with this sound principle of the administration of criminal justice. As a matter of fact, if it could be held that a judge could expel an attorney from a case solely because he filed a petition for impeachment with the legislative branch of the Government, then we would have a rule of despotism.

2. Whether a trial judge can summarily expel an attorney from a criminal trial without affording the attorney the constitutional safeguard of due process of law.

We believe this matter is fully explained in the dissenting opinion of Judge Stephens wherein he stated:

“There are three measures available to a judge of the District Court in respect of misconduct of a lawyer. (1) The judge may invoke the statutes providing for disbarment or suspension. D. C. Code (1940) Sec. 11-1302 empowers the District Court in general term to censure, suspend from practice, or expel any member of its bar for any crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or any conduct prejudicial to the administration of justice. This remedy must be exercised after the presentation to the court in general term of written charges under oath, and entry by the court of an order fixing a time for a hearing thereon, and service of a certified copy of the charges and order upon the lawyer charged with misconduct. D. C. Code (1940) Sec. 11-1304. (2) The judge may summarily adjudge the lawyer guilty of contempt and punish him by fine or imprisonment. Section 268 of the Judicial Code, 28 U. S. C. Sec. 385 (1940),

provides that the Federal courts 'shall have power * * * to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority * * *'. This remedy is, however, by the same statute limited to misconduct 'in their (the court's) presence, or so near thereto as to obstruct the administration of justice * * *'. And this language has been construed in *Nye v. United States*, 313 U. S. 33 (1941), to refer to geographic, rather than 'Causal,' proximity. Also, under this remedy, no punishment can be inflicted except the fine or imprisonment specifically provided for in the statute. 'The enactment is a limitation upon the manner in which the power shall be exercised, and must be held to be a negation of all other modes of punishment.' *Ex parte Robinson*, 19 Wall. 505, 512 (U. S. 1874). *Mullen v. Canfield*, 70 App. D. C. 168, 105 F. (2d) 47 (1939). (3) The judge may exercise the inherent power of a court to keep order and to insure fair trial. This court recognized that power in *Brown v. Miller*, 52 App. D. C. 330, 286 Fed. 994 (1923). There the court held that it was within the power of the then Supreme Court of the District of Columbia (now the District Court of the United States for the District of Columbia) to exclude a member of the bar from acting as attorney for one party to a case where it was made to appear that he had theretofore, as attorney for the opposite party, received confidential information concerning matters involved in the case, and that he was using the same therein to the prejudice of his former client; and the court held that the trial court's power thus to exclude an attorney existed apart from the rules relating to disbarment proceedings. Other circumstances wherein this inherent power might be exercised readily occur to mind: for example, where a lawyer in disorderly manner continuously interrupts and interferes with the progress of a trial. In such circumstances, while either the remedy of contempt or of general disbarment or both might be appropriate, they might, as in *Brown v. Miller*, be inefficacious. In some circumstances nothing but an attorney's removal will immediately accomplish a fair and orderly trial."

Then Judge Stephens said this:

"But I think it clear that the action of the respondent in the instant case cannot be justified as an invocation of any of the three measures which have been described above as available to a trial judge in respect to the misconduct of a lawyer. The order excluding the petition from further participation in the particular criminal case was not the action of the District Court in general term as provided for in D. C. Code (1940) Sec. 11-1302 and did not follow the procedure required by D. C. Code (1940) Sec. 11-1304."

The majority opinion treated the matter as one of contempt but the matter could not be one of contempt. Judge Stephen's opinion said this:

"The order of exclusion was not an adjudication of contempt and did not impose the type of penalty permissible for contempt. Indeed the remedy of contempt could not properly have been invoked because the act which occasioned the respondent's order, i.e., the filing of a paper with the Speaker of the House of Representatives requesting the respondent's impeachment, was not committed 'in their (the court's) presence, or so near thereto as to object the administration of justice * * *,' within the meaning of that language as construed by the Supreme Court."

Judge Stephens said further:

"The plain fact, under the record upon which the respondent's order of expulsion was made, is, in my view, that the order was in the nature of a penalty imposed upon the petitioner for filing the impeachment application."

3. Whether the action of a trial judge in expelling an attorney from a criminal trial for filing a petition for impeachment of the judge does not offend the constitutional safeguard of the right of free speech.

We believe that the case of *Bridges v. Calif.*, 314 U. S. 252, stands for the proposition that the orderly process of justice cannot be exercised in such a manner as to limit the constitutional rights, such as the right of free speech. Of course, it is recognized that there would be an exception where there is a "clear and present danger" to the process of justice but Judge Stephens pointed out that on the present record the filing of the impeachment petition did not constitute a "clear and present danger."

It is submitted, therefore, considering all aspects of the case, that petitioner's expulsion from the sedition trial was solely because he filed a petition for the impeachment of Judge Eicher and that Judge Eicher was without power to expel him on this account.

Is This Case Moot?

When Judge Eicher died and the sedition case ended in a mistrial it was the view of many persons that this case then became moot. However, upon more mature reflection it was the view of petitioner that the case was not moot. The sedition indictment is still outstanding and the Government has announced its intention to retry the case. Many of the defendants desire the services of petitioner. Accordingly, certain preliminary motions were filed on behalf of various defendants. On March 15, 1945, the Honorable T. Alan Goldsborough, sitting in Criminal Court No. One, District Court of the United States for the District of Columbia, ruled that petitioner could not participate further in the sedition case and that the order of Judge Eicher was binding on him as well as the affirmance of Judge Eicher's order by the Court of Appeals and that it was binding until such time as it was reversed by this Court. Accordingly, the Clerk of the District Court of the United States on March 15, 1945, entered the following order:

"James J. Laughlin, Attorney, is denied further participation in this case (See United States Court of Appeals for the District of Columbia, Misc. No. 71, Laughlin v. Eicher, dated 11/13/44).

(See Appendix 1).

Conclusion

In view of all the circumstances, petitioner says that the order of the Court of Appeals denying the writ of mandamus was in error and should be reversed.

JAMES J. LAUGHLIN,
National Press Building,
Washington, D. C.,
Petitioner in Proper Person.

APPENDIX

DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

No. 73086 Criminal

UNITED STATES, Plaintiff,

vs.

JOSEPH E. McWILLIAMS, et al., Defendants

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, do hereby certify the annexed to be a true and correct copy of the original of a certain docket entry, as it appears of record in the Clerk's Office of said Court in the above-entitled cause.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, of the City of Washington, this 24th day of March, 1945.

CHARLES E. STEWART,
Clerk.

By (S.) MAIRON E. LEWIS,
Deputy Clerk.

[SEAL]

DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

Criminal Court

No.	Parties	Charge
No. 73086	UNITED STATES <i>vs.</i> JOSEPH E. McWILLIAMS, et al.,	Vio. Sec. 11, Title 18 U. S. Code

Date	
1945 March 15	Ellis O. Jones, Robert Noble, Franz K. Ferenz, Ernest F. Elmhurst:

James J. Laughlin, attorney, is denied further participation in this case. (See U. S. Court of Appeals for D. C. cause, Misc. No. 71—Laughlin vs. Eicher, dated 11/13/44).



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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1172

JAMES J. LAUGHLIN, PETITIONER

v.

CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF COLUMBIA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the court of appeals (R. 24-34) are reported at 145 F. 2d 700.

JURISDICTION

The judgment of the court of appeals was entered November 13, 1944, and a petition for rehearing was denied December 5, 1944 (R. 35). On March 3, 1945, petitioner's time for filing a petition for a writ of certiorari was extended to April 2, 1945, and was again extended to April 17, 1945, by orders of the Chief Justice (R. 41). The petition for a writ of certiorari was filed April 17, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether petitioner is entitled to a writ of mandamus directing the vacation of the order of the presiding justice of the district court excluding him from further participation in the sedition trial.

STATEMENT

In August 1944, petitioner applied to the United States Court of Appeals for the District of Columbia for a writ of mandamus to the late Chief Justice Eicher of the District Court for the District of Columbia directing vacation of the Chief Justice's order excluding petitioner from further participation in the trial of the case of *United States v. McWilliams*, commonly called the sedition case, which was then in progress before him (R. 1-13). Petitioner, an attorney, alleged that from April 17 to July 5, 1944, he had represented Robert Noble and Edward James Smythe, two of the defendants on trial in that case; that on July 5, a proceeding was had outside the presence of the jury at which Chief Justice Eicher referred to a petition for his impeachment which petitioner had filed with the Speaker of the House of Representatives and called upon petitioner to show cause why he should not be dismissed from further participation in the case; that after hearing petitioner, the Chief Justice ordered that petitioner be dismissed as attorney of record for the two defendants whom he represented, and as attorney for any of the other defendants for whom he had appeared as associate counsel; and that he be "denied further participation in this case or in the

trial of it" (R. 1-4). The Chief Justice, in answer to the petition, alleged that petitioner's conduct had been "continuously contemptuous, obstructive, and disrespectful to the court since the commencement of the trial;" that both in and out of the court room petitioner had attempted to intimidate and coerce the court by harassing and embarrassing respondent as trial judge in the performance of his duties by various devices, including the filing of numerous irrelevant motions of a highly sensational nature, the bringing of unwarranted civil suits against respondent, and the announcement in open court that he had filed a petition for the impeachment of respondent; that prior to his expulsion petitioner had twice been adjudged guilty of contempt for his conduct during the course of the trial; and that the order excluding petitioner from further participation in the trial was merely an exercise of the inherent power of the court to prevent and remove obstructions to the administration of justice (R. 15-17). The Chief Justice also asserted that of the two defendants represented by petitioner on July 5, one had expressed his satisfaction with the substituted attorney appointed for him, and the other had been severed from the trial (R. 15). On November 13, 1944, the Court of Appeals for the District of Columbia granted petitioner leave to file his petition for mandamus but denied the petition (R. 35), two Justices dissenting (R. 28-34)¹

¹ By an equal division of its then sitting members the Court of Appeals had previously denied a similar petition filed by petitioner (R. 26).

On November 30, 1944, Chief Justice Eicher died, and on December 7, 1944, a mistrial was declared in the sedition case (R. 38). Petitioner subsequently moved to substitute as parties respondent in place of the late Chief Justice, the present Chief Justice and the Associate Justices of the District Court for the District of Columbia. He alleged in this motion that, after the mistrial had been declared, Justice Goldsborough had ruled that Chief Justice Eicher's order was effective to bar petitioner from any further participation in the sedition case (R. 39). The motion to substitute was granted on April 6, 1945 (R. 40).

ARGUMENT

The writ of mandamus is an extraordinary remedy awarded in the exercise of a sound judicial discretion only in cases where the petitioner's right to demand performance of a given act and the respondent's duty to perform are clearly established. *Ex parte Cutting*, 94 U. S. 14, 20; *International Contracting Co. v. Lamont*, 155 U. S. 303, 308; *United States v. Wilbur*, 283 U. S. 414, 420; *I. C. C. v. New York, N. H. & H. R. Co.*, 287 U. S. 178, 203. Petitioner presents no facts which show such a clear-cut right to performance owing to him. His right to appear as counsel in the sedition case was and is, of course, a derivative one, dependent on the desire of a defendant that petitioner represent him. It would appear, therefore, that the parties aggrieved by the exclusion of petitioner were the defendants who had engaged him, and not petitioner himself. Even at the time the decision be-

low was rendered, the dissenting opinion recognized that "It may well be that in the lapse of time since the filing of the original petition conditions and circumstances have arisen which would make useless present granting of the relief sought" (R. 28-29).² At the present time, petitioner's interest is even more speculative.³ A mistrial has been declared because of Chief Justice Eicher's death. There has been no determination as to which of the defendants will be included in the event of a retrial. It is not certain that any of the defendants, if retried, will wish to engage petitioner's services. Hence, even though Justice Goldsborough has ruled that petitioner is barred from further participation in the sedition case (see *supra*, p. 4), petitioner has no such direct and immediate interest in future proceedings in the case as would entitle him to the relief he seeks.

Apart from these considerations, petitioner's application to the Court of Appeals failed to allege facts which would have warranted the issuance of the extraordinary writ of mandamus. As all of the judges in the court below agreed (R. 27, 31), a district judge has power, in the interests of maintaining a fair and orderly trial, to exclude an attorney from participation in a particular case. *Viereck v. United*

² Of petitioner's two clients, one had then accepted other counsel and the other had been severed from the case (see *supra*, p. 3).

³ Petitioner's application must be considered in the light of the facts as they now exist rather than the state of facts presented at the time the petition was filed. *Northern Pacific Railroad v. Dustin*, 142 U. S. 492, 508; see *International Contracting Co. v. Lamont*, 155 U. S. 303, 309.

States, 130 F. 2d 945, 962 (App. D. C.), reversed on other grounds, 318 U. S. 236; *Brown v. Miller*, 286 Fed. 994, 997 (App. D. C.); *Kelley v. Boettcher*, 82 Fed. 794 (C. C. A. 8). We submit that the order here sought to be reviewed represented an exercise of that power. The dissenting judges below, who thought that the exclusion order was merely a punishment visited upon petitioner because of contumacious conduct outside the presence of the court, treated the order as based solely on the petition for impeachment, unrelated to petitioner's whole course of conduct during the trial (R. 32-33). We believe, as did the majority below (R. 28), that the petition for impeachment cannot be thus isolated. The events immediately prior to the proceeding which resulted in the exclusion order are set forth in full in the majority opinion below (R. 24-26). Petitioner's prior conduct during the course of the trial, the fact that he had already twice been adjudicated in contempt of court were, of course, well known to both petitioner and Chief Justice Eicher and were inevitably before the court at the time the exclusion order was made. The nature of petitioner's earlier contumacious and disruptive conduct which led to his second conviction for contempt after a trial before Associate Justice Bailey is detailed in the recent opinion of the Court of Appeals affirming that conviction. *Laughlin v. United States*, decided April 30, 1945. In a supplementary opinion filed May 8, 1945, denying petitioner's application for rehearing, the court reiterated that petitioner's contempts "ob-

structed the orderly administration of justice" and said that his conduct was part of his "plan to disrupt the trial."

It is thus evident, as appears from the response filed on behalf of Chief Justice Eicher (see *supra*, p. 3), that the petition for impeachment was the precipitating factor rather than the sole cause of petitioner's exclusion. Hence, the Chief Justice's determination that, in the light of the whole course of petitioner's conduct, his exclusion was necessary to insure the orderly processes of justice involved the exercise of his discretion in respect of a matter within his jurisdiction. Since it is well established that mandamus does not lie to review the decisions of officials in matters within their discretion, the Court of Appeals properly declined to issue the writ. *Adams v. Nagle*, 303 U. S. 532, 542; *Wilbur v. United States*, 281 U. S. 206; *Alaska Smokeless Coal Company v. Lane*, 250 U. S. 549, 555.⁴

⁴ The majority below were also of the opinion that petitioner's attack on Chief Justice Eicher, embodied in the impeachment petition, "in itself, made it so improper for petitioner to remain in the trial that it would have justified his dismissal" (R. 28). Although we do not believe it necessary to consider the expulsion order as based on the impeachment petition alone, we submit that the opinion is likewise correct in this aspect. The petition for impeachment was predicated solely on criticism of the conduct of the Chief Justice during the trial then in progress (R. 10-13) and obviously had for its object his removal before conclusion of the trial. Hence petitioner was, in a very direct way, endeavoring to obstruct and impede the orderly progress of the pending trial. Moreover, as the majority below pointed out, petitioner had by this conduct brought about a situation

CONCLUSION

For the reasons stated we respectfully submit that the petition for a writ of certiorari should be denied.

HUGH B. COX,
Acting Solicitor General.

TOM C. CLARK,
Assistant Attorney General.

ROBERT S. ERDAHL,
BEATRICE ROSENBERG,
Attorneys.

MAY 1945.

where it was improper for him further to remain in the trial and where his continued participation would be "useful neither to his client nor to the court and would seriously embarrass counsel, court, and defendants" (R. 27).

